

FISCAL NOTE

SB 2267 - HB 2334

February 7, 2002

SUMMARY OF BILL: Creates the *Educational Records as Evidence Act* which sets out the process for the production of subpoenaed student educational records. The provisions of the act include the following:

- Defines *custodian* as the education record practitioner and any other persons who are official custodians or depositories of records of a public, private, or parochial school in this state.
- If a custodian of records is subpoenaed for records of a student in a proceeding where the school is neither a party to the action nor the place where any cause of action is alleged to have arisen, it will be sufficient compliance if the custodian provides copies of the records within five days after being served with a subpoena duces tecum, either by personal delivery or certified or registered mail, to the court clerk or the officer, body or tribunal conducting the hearing.
- The adverse party shall be given a copy of the subpoena duces tecum not less than 10 days prior to the date set for the trial of the matter for which the records may be introduced.
- The custodian is directed to provide the records to the requesting attorney if such subpoena conspicuously states that the records are required in a tort action or domestic relations proceeding in which the student's education is an issue and directs the custodian's attendance at a deposition.
- Custodian affidavit shall accompany records, including certifying amount of school's reasonable charges for furnishing the records. The affidavit filing shall be taxed as court costs.
- The subpoena must contain certain clauses depending on whether it calls for custodian's personal attendance and/or production of original educational records. The copy of the record and the affidavit of the custodian of the records shall be admissible into evidence to the same extent as though the original records were offered and the custodian had been present and testified to the matters stated in the affidavit. If custodian's attendance is required, then reasonable cost of attendance and producing records shall be taxed as a court cost.
- If copies are not made in advance, they can be made after introducing the original record, and reasonable charges for copies shall be taxed as a court cost.

ESTIMATED FISCAL IMPACT:

Increase Local Govt. Expenditures - Not Significant

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Estimate assumes a cost for postage and copying records. In addition, since any subpoenaed records would be filed with a court clerk, local government administrative costs would increase. However, such increase in local government expenditures is estimated to be not significant.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James A. Davenport". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

James A. Davenport, Executive Director